



CLOSED CASE SUMMARY

ISSUED DATE: JANUARY 4, 2022

FROM: DIRECTOR ANDREW MYERBERG
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2021OPA-0263

Allegations of Misconduct & Director's Findings

Named Employee #1

Allegation(s):		Director's Findings
# 1	8.200 – Using Force 1. Use of Force: When Authorized	Not Sustained (Management Action)

Named Employee #2

Allegation(s):		Director's Findings
# 1	8.200 – Using Force 1. Use of Force: When Authorized	Not Sustained (Management Action)
# 2	8.300 - POL - 3 Use of Force - Impact Weapon. 5. Officers Will Not Use Flashlights as Impact Weapons, Except in Exigent Circumstances	Not Sustained (Lawful and Proper)
# 3	8.300 – POL – 3 Use of Force – Impact Weapon. 3. An Intentional Hard Strike to the Head with Any Impact Weapon is Prohibited Unless Deadly Force is Justified	Not Sustained (Lawful and Proper)
# 4	5.001 – Standards and Duties 10. Employees Shall Strive to be Professional	Not Sustained (Unfounded)

Named Employee #3

Allegation(s):		Director's Findings
# 1	8.200 – Using Force 1. Use of Force: When Authorized	Not Sustained (Lawful and Proper)

This Closed Case Summary (CCS) represents the opinion of the OPA Director regarding the misconduct alleged and therefore sections are written in the first person.

EXECUTIVE SUMMARY:

It was alleged that the Named Employees may have used excessive force. It was further alleged that Named Employee #2 may have been unprofessional and may have improperly used a flashlight as an impact weapon.

SUMMARY OF INVESTIGATION:

Named Employee #1 (NE#1) and Named Employee #2 (NE#2) responded to a call concerning an occupied burglary. The suspect was reported to be armed with a crowbar. The officers observed an individual – referred to here as the Subject – who matched the suspect description. The Subject was standing by a white truck. NE#1 told the Subject to stop but the Subject proceeded towards the white truck. NE#1 started running towards the truck. When he reached the truck, he tried to pull the Subject out but was unsuccessful. The Subject started the truck. NE#2 followed behind NE#1. He observed NE#1 struggling with the Subject. NE#2 reached into the vehicle and also tried to pull the Subject



out. NE#2 saw the Subject reaching for the gear shift. At that time, NE#2 struck the Subject in the head area with a small flashlight that he was holding in his hand. NE#2 struck the Subject several times.

Ultimately, the officers pulled the Subject out of the vehicle. NE#1 fell to the ground, striking his head on the ground. When NE#1 got up, he saw the Subject and NE#2 still struggling. He moved over and struck the Subject once with what he described as a “hammer fist.” He hit the Subject in the cheek area. He described the strike as ineffective. After the struggle continued, NE#1 used a knee strike on the Subject. After this, the Subject said: “Ok, stop.” However, the Subject continued to physically resist. Another officer – Named Employee #3 (NE#3) – arrived on scene and also used a knee strike on the Subject. This was effective and the officers were able to collectively take the Subject into custody.

After reviewing this incident, OPA initiated an investigation to assess the force used by the Named Employees. This investigation included reviewing Body Worn Video (BWV) and documentation. OPA also interviewed the Named Employees.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegation #1

8.200 – Using Force 1. Use of Force: When Authorized

OPA has seen a number of recent cases in which officers have responded to subjects either in the near vicinity of or inside of vehicles. In all of these cases, the officers quickly engaged with the subjects, often with little or no communication, and tried to extract them. This led to significant uses of force – such as what occurred here.

In this case, OPA has less concerns with NE#1’s force than with his tactics and decision-making. His decision to run towards the vehicle and engage with the Subject without any pre-planning or communication with NE#2 led, in OPA’s opinion, to a volatile and dangerous situation. While the Subject bears much of the responsibility for this, NE#1’s actions were also not well thought through. Moreover, it caused a potential deadly force situation that could have been avoided or, at the very least, mitigated with a better approach.

OPA requests that SPD develop training to address these types of scenarios. This training could be part of overall defensive tactics or de-escalation training or could be a stand-alone block. The training should focus on subjects in and around vehicles and discuss what force is appropriate in such circumstances, as well as the specific dangers and risks presented by such situations. The training should also instruct officers on the minimum communication and planning that must occur prior to engaging with subjects in and around vehicles.

Recommended Finding: **Not Sustained (Management Action)**

Named Employee #2 - Allegation #1

8.200 – Using Force 1. Use of Force: When Authorized

For the same reasons as stated above (see Named Employee #1 – Allegation #1), OPA recommends that this allegation be Not Sustained – Management Action.

Recommended Finding: **Not Sustained (Management Action)**



Named Employee #2 - Allegation #2

8.300 - POL - 3 Use of Force - Impact Weapon. 5. Officers Will Not Use Flashlights as Impact Weapons, Except in Exigent Circumstances

SPD Policy 8.300-POL-3(5) prohibits officers from using a flashlight as an impact weapon, except where exigent circumstances are present. SPD Policy 8.300-POL-3(3) further states that “an intentional hard strike to the head with any impact weapon is prohibited unless deadly force is justified.”

NE#2 asserted that his use of the flashlight – which he clarified was a small model – was warranted given the exigent circumstances of this incident. He pointed to the fact that the Subject was behind the wheel of a running truck and was reaching for the gearshift, as well as that both he and NE#1 were within the door well. He believed that, if the Subject could drive away, it could result in serious injury if not death to him and NE#1. NE#2 believed that, for all of these reasons, it was a deadly force situation and that the level of force he used was appropriate.

Ultimately, OPA concludes that NE#2 was placed in a difficult situation by NE#1. After NE#1 ran toward the truck and began engaging with the Subject, NE#2 had no option other than to follow. At that point, NE#2 became involved in the physical conflict and it escalated substantially. OPA agrees that, at this time, NE#2 was facing the risk of serious bodily injury or death and that his use of his flashlight to strike the Subject was permissible.

Accordingly, OPA recommends that this allegation and Allegation #3 be Not Sustained – Lawful and Proper.

Recommended Finding: **Not Sustained (Lawful and Proper)**

Named Employee #2 - Allegation #3

8.300 – POL – 3 Use of Force – Impact Weapon. 3. An Intentional Hard Strike to the Head with Any Impact Weapon is Prohibited Unless Deadly Force is Justified

For the same reasons as stated above (see Named Employee #2 – Allegation #2), OPA recommends that this allegation be Not Sustained – Lawful and Proper.

Recommended Finding: **Not Sustained (Lawful and Proper)**

Named Employee #2 - Allegation #4

5.001 – Standards and Duties 10. Employees Shall Strive to be Professional

SPD Policy 5.001-POL-10 requires that SPD employees “strive to be professional at all times.” The policy further instructs that “employees may not engage in behavior that undermines public trust in the Department, the officer, or other officers.” (SPD Policy 5.001-POL-10.) The policy further states the following: “Any time employees represent the Department or identify themselves as police officers or Department employees, they will not use profanity directed as an insult or any language that is derogatory, contemptuous, or disrespectful toward any person.” (*Id.*) Lastly, the policy instructs Department employees to “avoid unnecessary escalation of events even if those events do not end in reportable uses of force.” (*Id.*)



After the Subject was handcuffed and secured, NE#2 walked several feet away from him and remarked to himself and about the Subject: "Fucking dumbass." The statement was made at a low volume. There was no indication that the Subject or any other community members heard the statement.

NE#2 told OPA that the statement was made out of frustration and stress. He explained that he felt that he was going to die during this incident and the statement was made simply as a release after the fact. He told OPA that he was so stressed out and emotionally affected by what occurred that he broke down crying when he was interviewed by the Department's Force Investigation Team in the immediate aftermath of the incident.

OPA recognizes the effect that such an incident can have on an officer and, specifically, the impact it had on NE#2. SPD policy prohibits the use of a profanity as an insult; however, here, NE#2 did not make the statement to the Subject and there was no indication that the Subject heard it. Accordingly, OPA declines to find that it violated the Department's professionalism policy and recommends that this allegation be Not Sustained – Unfounded.

Recommended Finding: **Not Sustained (Unfounded)**

Named Employee #3 - Allegation #1

8.200 – Using Force 1. Use of Force: When Authorized

NE#3 responded to the scene after NE#1 and NE#2 and while they were already involved in a physical struggle with the Subject. He told OPA that he was on his way to the scene when NE#1 and NE#2 did not answer their radio. This caused him to be concerned. He grew even more concerned when he viewed the ongoing altercation. NE#3 observed NE#1 and NE#2 trying to hold the Subject to the ground and the Subject lifting them up. He felt that the Subject could be high on narcotics given his conduct.

Based on what he observed and in an effort to end the fight and get the Subject under control, NE#3 delivered one knee strike to the Complainant's shoulder. NE#3 asserted that this force was consistent with both policy and training. He further stated that it was effective as it allowed him to gain control of the Subject's arm prior to handcuffing him.

OPA agrees with NE#3 that his force was consistent with policy. NE#3 was permitted to use force to stop the Subject from fighting the officers and to take him into custody. NE#3 used one knee strike and then modulated his force when that was successful. Moreover, this force was consistent with NE#3's training. SPD instructs officers that intermediate force - such as a knee strike – is appropriate when individuals are actively physically resisting officers and presenting a risk of harm. This was the case here.

Accordingly, OPA recommends that this allegation be Not Sustained – Lawful and Proper.

Recommended Finding: **Not Sustained (Lawful and Proper)**